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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/493,819	01/28/2000	Naoki Shibata	PM 266204	2698
7590	01/22/2004		EXAMINER	
MCGINN & GIBBS, PLLC 8321 OLD COURTHOUSE ROAD SUITE200 VIENNA, VA 22182-3817			WILLE, DOUGLAS A	
			ART UNIT	PAPER NUMBER
			2814	

DATE MAILED: 01/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/493,819	SHIBATA, NAOKI
	Examiner Douglas A Wille	Art Unit 2814

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 October 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3,5 and 7-17 is/are pending in the application.
- 4a) Of the above claim(s) 12-17 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,3,5,7-11 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                               | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ .                                   |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Newly submitted claims 12 – 17 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: These claims are directed to a method which are restrictable and therefore constitutes an independent invention.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 12 – 17 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edmond et al. in view of Duggan.

4. With respect to claim 1, Edmond et al. show a group III nitride light emitter (see cover Figure and column 4, line 57 et seq.) with a substrate 21, a buffer layer 23 directly on the substrate, a heterostructure layer 27, directly on the buffer, which can be  $A_xB_{1-x}N$  (column 5, line 48) where A and B are Group II elements and x, y can range from 0 – 1 inclusive. Also shown is an active layer 25, directly on the heterostructure layer of  $A_xB_{1-x}N$  (column 5, line 48). Duggan shows that for III-nitride devices the addition of a graded layer can be used to reduce the

interface strain and minimize dislocations (see abstract) and shows that graded layers can be provided only between the clad layers and the active layers (column 7, line 64) and that the graded layers can be provided between all the layers. It would have been obvious to include the graded layers shown by Duggan for the advantage shown.

5. With respect to claim 7, Edmond et al. show a buffer layer of  $A_xB_{1-x}N$  (column 5, line 22), which could be GaN.

6. With respect to claim 9, note that the claimed stoichiometry is within the ranges shown and the choice of a particular value is a matter of design choice.

7. Claims 3, 5, 8 and 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edmond et al. in view of Duggan and further in view of Nitta et al.

8. With respect to claim 3, Nitta et al. show a blue light emitter (see Figure 1 and column 2, line 62 et seq.) where the active layer 104 can be InGaN (column 3, line 43) and the clad layer 103 can be InAlGaN (column 3, line 33). Note that the wavelength of the emitted light can be adjusted by varying the compound (column 3, line 52) and it would be obvious to vary the composition of the clad layer to provide sufficient optical confinement and to use a compound with Al to increase the wavelength range available. Note also that Duggan shows that the grading is complete with the interface being identical on either side (see for instance column 9, line 36) and thus provides lattice match.

9. With respect to claim 5, Duggan shows that for III-nitride devices the addition of a graded layer can be used to reduce the interface strain and minimize dislocations (see abstract) and shows that graded layers can be provided only between the clad layers and the active layers

(column 7, line 64). It would have been obvious to include the graded layers shown by Duggan for the advantage shown.

10. With respect to claim 8, Edmond et al. show a buffer layer of  $A_xB_{1-x}N$  (column 5, line 22) which could be GaN.

11. With respect to claim 10, note that the claimed stoichiometry is within the ranges shown by Nitta et al. and the choice of a particular value is a matter of design choice.

12. With respect to claim 11, in standard form, as described by the references quoted above, the double heterostructure shows the emitting layer as having a smaller bandgap than the surrounding layers and is inherent in the design.

***Response to Arguments***

13. Applicant's arguments filed 10/21/03 have been fully considered but they are not persuasive.

14. Applicant provides a piecemeal analysis of the references and states that Edmond et al. do not show grading which is true but Duggan is relied upon to show this. Applicant further states that Edmond teaches away from InGaN structures but note that the general formula encompasses these structures and is not changed by the fact that a different specific instance is shown.

15. Applicant provides a further piecemeal analysis of the references and states that Duggan does not show the structure that Edmond et al. is relied upon to show. Applicant states that Edmond et al. does not teach the combination with Duggan. But Duggan provides the justification for the combination, as is stated. Note that Duggan shows good reason for adding the graded layers and it does not take hindsight to follow Duggan's improvement.

16. Applicant provides a further piecemeal analysis of the references and states that Nitta et al. do not show graded layers. True but Nitta et al. is not relied upon to show this and is relied upon to show the compound.

***Conclusion***

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Douglas A Wille whose telephone number is (571) 272-1721. The examiner can normally be reached on M-F (6:15-2:45).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wael Fahmy can be reached on (571) 272-1705. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.



Douglas A. Wille  
Primary Examiner

January 16, 2004

